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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/422,360	04/17/95	LOWENSTEIN	M HML-201-A-1

WEINER & BURT, PC
P. O. BOX 186
HARRISVILLE MI 48740

MM71/0910

EXAMINER

HUYNH, K

ART UNIT	PAPER NUMBER
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2836

34

DATE MAILED:

09/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/422,360

Applicant

Lowenstein

Examiner

Kim Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 24, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22, 26, 29, 33-35, and 37-39 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-35, 37, and 38 is/are allowed.
- 6) ☒ Claim(s) 22, 26, 29, and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22, 26, 29, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art (page 1, lines 11-18) in view of Stacey and Thanawala.

Claims 22, 26, 29, and 39, despite a slight difference in wording, essentially repeat the limitations as cited in appealed claims 1-11 and 20-21 which have been affirmed by the board (Appeal No. 1997-1187, decision render 7/25/00, see pages 3-8 of the opinion) and therefore are rejected on the ground of res judicata.

Note the specifics of the three passive electrical components which are tuned to the third harmonic frequency are recited in the appealed claims 2 and 4 (affirmed by the board).

Allowable Subject Matter

3. Claims 33-35 and 37-38 are allowed because they contain the same subject matter as cited in the original claims 12 and 17 which applicant was affirmed by the Board of Appeals and Interferences (decision rendered 7/25/00).

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Response to Arguments

4. Applicant's arguments filed 3/30/01 have been fully considered but they are not persuasive.

a. The decision rendered 7/25/00 (pages 3-14) addresses all the arguments reiterated in the remarked filed 8/2/401. The decisions states that:

i. The artisan would have found the Stacey reference to be of particular pertinence to the problem at hand (page 4, middle of the page);

ii. "... the reference explicitly discloses that an active element is unnecessary when there is but one harmonic frequency" (page 5, lines 3+);

iii. "... harmonic filtering traditionally consisted of passive components, the artisan -- when faced with the problem of attenuating a single harmonic frequency -- would have found Stacey to be suggestive of using only passive components" (page 6, lines 5-9);

iv. "... the artisan would have recognized ... three identical filters having three passive elements in the configuration of Figure 5 of Stacey -- one filter for each phase of a three phase system" (page 8, 1-5).

b. Regarding the declaration under 37 C.F.R. 1.132 to establish evidence of non-obviousness based upon second considerations. The examiner is not persuasive by the evidence established by declaration for the following reasons:

i. The facts presented are not germane to the rejection at issue;

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ii. It includes statements which amount to an affirmation that the claimed subject matter functions as it was intended to function. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof;

iii. It states that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no showing that persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references and still were unable to solve the problem;

iv. The declaration fails to prove that the commercial success is due to the merits of the claimed invention and not the marketing of the product itself.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

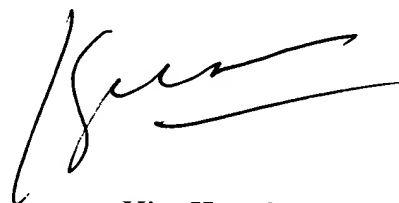
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Huynh whose telephone number is (703) 308-1678.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Josie Ballato, can be reached on (703) 308-0269.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.



Kim Huynh
Patent Examiner
Art Unit 2836

KH

September 7, 2001